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act is not void because it does not define the offense created with sufficient definiteness. The legislature used the word "kosher" in the customary sense and defined it in the statute. Second, this is not class legislation merely because the persons chiefly interested in it are of the Hebrew faith. The benefits of the act are not confined to them. "Kosher" meat is prepared under conditions insuring a high degree of cleanliness and purity and the public at large should be able to rely upon the truthfulness of the label "kosher." Third, the act is not unduly oppressive upon dealers in meat inasmuch as the intention to defraud is an essential element of the offense. A mistake made in good faith could never constitute a violation of the statute.

A dissenting opinion was written by one justice who regarded the definition of the offense forbidden so indefinite and uncertain, so dependent upon technical features of the Hebrew code, as to be unconstitutional.

War Problems. *Alien Enemies—Rights During War—Conspiracy to Aid Escape.* DeLacey v. United States (U. S. Circuit Court of Appeals, May 6, 1918, 249 Fed. 625). In a prosecution for the crime of conspiring to aid the escape of alien enemies who had been interned by special order of the President, the constitutionality of the Alien Enemy Act of July 6, 1798, was attacked on the ground that it deprived persons thus interned of their liberty without due process of law. In disposing of this argument the court pointed out that at common law "alien enemies have no rights and no privileges, unless by special favor, during time of war" and that nothing in the Constitution of the United States in any way restricted the power of Congress to pass such a law. The power to enact such a law is necessary for the preservation of the government, and the right of every nation to exercise it is well established by international law. Since the confinement of alien enemies is a measure of national protection and not a punishment for crime it is unnecessary that judicial process be resorted to. It is entirely proper to exercise the power through the executive branch of the government alone.

Alien Enemy—Right to State Fishing License During War. State v. Darwin (Washington, May 10, 1918, 173 Pac. 29). Application was here made by a native of Austria-Hungary who had declared his intention to become a citizen of the United States for a writ of mandamus to compel the state fish commissioner to issue to him a license to fish in Puget Sound. The state statute provided for the issuance of such

licenses to persons who are eighteen years of age, citizens of the United States, or have declared their intention of becoming such, and have resided in the state for a period of one year. There was no doubt that the relator met all the qualifications thus set up. Did the fact that he was still the citizen of a nation with whom the United States is at war alter or diminish his rights under the statute? It is held that it did not. The proclamation issued by the President after the declaration of a state of war with Austria-Hungary displayed an attitude of friendship toward law-abiding subjects of that country living in the United States. It was specifically guaranteed to them therein that if they conducted themselves peacefully and in accordance with law they would be undisturbed in their lives, property and occupations. While the national government undoubtedly has the power to abridge the privileges and immunities of subjects of Austria-Hungary who have declared their intention of becoming American citizens, and might in effect suspend in respect to them the provisions of the state statute above mentioned by denying them the right to fish in any of the territorial waters of this country, the fact remains that it has not as yet done so. Until it does such persons are entitled to claim the full benefit of the statute as it stands.

Army and Navy Motor Vehicles—Applicability of Local Speed Regulations. State v. Burton (Rhode Island, June 19, 1918, 103 Atl. 962). The defendant was charged with a violation of the speed ordinance of the city of Newport. He was an enlisted man in the United States naval reserve and was engaged at the time of the alleged violation of the ordinance in carrying out the lawful orders of his superior officer. It is held in this case that the exigencies of the military and naval service of the national government must override the ordinary rules regulating the use of highways. "Any state law, the operation of which will hinder that government in carrying out such constitutional power (the conduct of the war) is, during the exercise of the power, suspended as regards the national government and its officers, who are charged with the duty of prosecuting the war." This suspension of local regulations, however, applies only in those cases in which there is actual military necessity for such suspension.

Conscription Act—Acts Constituting Evasion. United States v. Miller (U. S. District Court, April, 1918, 249 Fed. 985). The defendant in this case registered for the draft on June 5, 1918. In July by a declaration

of trust and assignment of mortgage he conveyed to another person property amounting to \$25,300 and providing an annual income of \$1700. This trust was created for a period of ten years during which time he was to receive none of the income except that the interest charges upon a \$6000 mortgage upon his home were to be paid from that source. Upon being duly drawn for military service he presented to his draft board affidavits declaring that his wife was solely dependent upon him for support, that he owned no property except his home which was mortgaged as before mentioned, that he had no source of income except his law practice. Upon these facts three indictments against the defendant were presented: First, that he had "evaded the requirements of the act and neglected to perform a duty required of him by it" in that he had fraudulently set up a claim of dependency for his wife; second, that he had made a "false statement or certificate as to the fitness or liability of himself for military service," in that he had sworn that he had no income save from his law practice when in reality he had an income, from the trust fund, of \$480; third, that he was guilty of perjury in so swearing. The court overruled a demurrer to all three counts of the indictment. It held that the facts alleged in the first two constituted offenses under the Selective Service Act. The demurrer to the third count, that charging perjury, was based upon the contention that the fact of an income of \$480 yearly for the payment of the interest on the mortgage was immaterial and a charge of perjury could not be based upon the falseness of the affidavit which should have mentioned that sum. The court held that such income was material, that exemption upon the ground of dependency is, by the provisions of the act, based upon a full and accurate knowledge of the financial status of the registrant, and that no facts bearing upon such status can be irrelevant or immaterial.

Conscription Act—Habeas Corpus to Review Facts Regarding Physical Condition of Registrant Denied. De Genaro v. Johnson (U. S. District Court, February 27, 1918, 249 Fed. 504). De Genaro was drafted and sent to camp. He was not rejected because of physical disability either by the medical examiners of his local draft board or by the army examining officers at Camp Upton. The latter, however, ordered him to undergo a certain operation and he refused to do this. He sues for a writ of habeas corpus on the ground that the army authorities have no authority to compel him to submit to an operation and that without it he is physically unfit for military service. The court denied in sweep-

ing terms any jurisdiction on its part to issue the writ. "If a person were admittedly found to be physically disabled, by an examining board of the army, and if the army authorities should refuse to discharge him, for purely arbitrary or disciplinary reasons, the courts have no authority to take testimony, examine into the man's physical condition, upon a hearing, and discharge him as held without authority of law, even if the facts appear as he alleges." The decision of the examining board is final so far as any relief by way of habeas corpus is concerned.

Conscription Act—Supersedes Conflicting Provisions of Treaty with Foreign Nation. Ex parte Larrucea (U. S. District Court, October 6, 1917, 249 Fed. 981). Larrucea was convicted of evading the provisions of the Selective Service Act by failing to register. He asks for a writ of habeas corpus, alleging the unconstitutionality of the law, and also contending that, as a Spanish citizen who has taken out his first naturalization papers in the United States, he is exempt from every form of compulsory military service by virtue of the terms of the treaty between the United States and Spain in force since 1903. The Selective Service Act plainly includes among those subject to its provisions "male persons not alien enemies, who have declared their intention to become citizens." There is no evidence in the act of any intention on the part of Congress to exempt Spanish citizens. It seems clear, in short, that there is a conflict between the statute and the treaty. So far as the courts are concerned, however, a treaty occupies no position of superiority over an act of Congress and when such a conflict as this arises between the two the courts are bound to give effect to the one which was adopted latest in point of time. The treaty of 1903 is, therefore, of no avail to the defendant as a protection against the operation of the conscription act. The court does not open the question of the constitutionality of the Selective Service Act since that question has been finally settled by the Supreme Court.

Contracts—Right to Cancel Because of War. In re Boston Opera Company (U. S. District Court, January 26, 1918, 249 Fed. 269); *Same* (U. S. District Court, January 26, 1918, 249 Fed. 271). In the first of these cases the Boston Opera Company had entered into a contract of employment with one Smith, a musician, for the opera season of 1914-1915. The company reserved the option in this contract to cancel it in case of "riot, fire, railroad accident, public calamity, or any other casualties over which the party of the first part has no control." In Novem-

ber, 1914, after the outbreak of the European war it sent Smith notice that its contract with him was canceled since the war was a "public calamity" which made the maintenance of the opera impossible. Smith contended that the exigencies which gave the company the right to cancel its contract with him did not include a war to which the United States was not a party. The court refused to take this view and decided that the European war so strikingly altered the conditions under which the contract was made and so seriously burdened the company as to justify the view that it was a "public calamity" which would warrant the cancelation of the contract. This case is distinguished from that of *Richards v. Wreschner* (156 N. Y. Supp. 1054) in which the defendant agreed to sell Belgian antimony in monthly quantities up to September, 1914. Failure to perform the contract was held not to be excused by the outbreak of the European war in the absence of any specific reservation by the defendant of the right to cancel it in case of the development of conditions beyond their control.

In the second case above, the position of the company was even stronger, since the contract in question, which was with an Italian opera singer for the same time period and was canceled for the same reasons, explicitly reserved to the company the right to terminate it "in case of war." This was held to refer to any war which might alter materially the conditions under which the contract was made even though the United States was not a party to such war.

Deserter from the Navy—Authority to Arrest—False Imprisonment—Coercion. *People v. Hamilton* (New York, Appellate Division, May 17, 1918, 170 N. Y. Supp. 705). The defendant was the manager of a detective agency. Through his agent he arrested one Davidson, a sailor in the United States navy, who at the time he was seized by the defendant was a "straggler," having overstaid his shore leave. The sailor was taken in handcuffs to the defendant's office and kept a prisoner there for 9 days, thus making him a "deserter" due to his prolonged absence from his ship, during which time efforts were made by the defendant to secure from the bureau of navigation in Washington the offer of a reward for his return to the proper naval authorities. These efforts were carried on by making false statements and were finally successful, and a reward of \$50 was paid to the defendant. The acts of Congress respecting the arrest of deserters or stragglers from military or naval service confer the right to make such arrests only upon a "civil officer having authority under the laws of the United States, or of any

state, territory or district." The defendant was not a civil officer and had been given no such authority. He was convicted of violating section 530 of the New York Penal Law which makes it a misdemeanor to "coerce" another person with a view to compelling wrongfully and unlawfully another person to do or abstain from doing an act which he has a legal right to do or to abstain from doing. While admitting that this statute was enacted for the purpose of dealing with labor disputes the court held that it could be applied to the case in point, since the facts proved brought the conduct of the defendant squarely within the provisions of the law.

Disbarment of Attorney—Violation of Conscription Act as Crime Involving Moral Turpitude. In re Hofstede (Idaho, June 25, 1918, 173 Pac. 1087). Hofstede was convicted of advising men of registration age not to register for the draft. He was then summoned to show cause why he should not be disbarred in accordance with the state statute authorizing the disbarment of attorneys by the state supreme court or district courts on the ground of conviction of felony or misdemeanor involving moral turpitude. His defense was based upon the contention that the crime of which he had been convicted was not one which involved moral turpitude. The court did not agree with this view but decided that an effort to interfere with the work of raising an army in the United States for the conduct of the war was an act of disloyalty and involved moral turpitude. The disbarment was, accordingly, ordered.

Espionage Act—Inciting Insubordination in Army or Navy. United States v. Krafft (U. S. Circuit Court of Appeals, April 23, 1918, 249 Fed. 919). The defendant was convicted of violating the third section of the Espionage Act of June 15, 1917, by uttering in the presence of soldiers of the United States army statements intended to cause insubordination, mutiny, disloyalty and refusal of duty on the part of such soldiers. The trial judge charged the jury that they might find a verdict of guilty only if satisfied that the statements alleged had actually been uttered and had been uttered with the intention on the part of the defendant to cause insubordination, mutiny, disloyalty, and refusal of duty. He refused to charge the jury that in order to convict the prosecution must prove that such insubordination, etc., had actually resulted from the defendant's remarks. This court held on appeal that the jury had been correctly charged. A violation of the clause of the statute in question results even from an entirely unsuccessful attempt to

stir up mutiny and disloyalty in the army or navy. To make the defendant's guilt dependent upon the results of his criminal efforts would be equivalent to making it depend not "upon what he did in the way of counseling disloyalty, but upon what his hearers did in the way of following his directions. In other words, the defendant could do all in his power to bring about disloyalty, but as long as he did not succeed he committed no crime." Such a construction is entirely foreign to the purpose of the Espionage Act, which aims to prevent not merely the results of disloyal propaganda but the propaganda itself.

Freedom of Press—Ordinance Prohibiting Publication and Sale of Certain Newspapers. *Star Co. v. Brush* (New York, Supreme Court, June 4, 1918, 170 N. Y. Supp. 987); *New Yorker Staats-Zeitung v. Brush* (New York, Supreme Court, June 4, 1918, 170 N. Y. Supp. 993); *German Herold Publishing Co. v. Brush* (New York, Supreme Court, June 4, 1918, 170 N. Y. Supp. 993). The city of Mt. Vernon, New York, passed an ordinance forbidding the publication or sale of any newspapers printed in the German language and of the *New York American* and the *New York Evening Journal* which were specifically named. The preamble to the ordinance declared that these papers were deemed to be "harmful to the best interest of this nation in the prosecution of the war." These three cases, which may be discussed together, are based on motions by the plaintiff newspapers for injunctions pending final judgment in the case to restrain the enforcement by the city officials of Mt. Vernon of the ordinance mentioned. The injunctions were granted in each case for the following reasons set forth by the court: First, Mt. Vernon has no greater police power than that enjoyed by other cities of the same class, the regulation and suppression of newspapers is not among the powers which it enjoys by virtue of constitutional provision or statutory authorization and the ordinance in question is accordingly *ultra vires*. Second, the legislature of the state itself could not have passed such a law nor could it have authorized the city to pass this ordinance without violating section 8 of article 1 of the constitution of New York which provides: "Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press." If publications are circulated which are in violation of the law those responsible may be punished; but such publications cannot be suppressed arbitrarily because it is anticipated that they may violate the law or consti-

tute a public menace. The existence of a state of war creates no new power in this respect on the part of municipalities. If the national safety demands a restriction upon the freedom of the press that restriction should be imposed by national and not by local action.

Naturalization—Cancellation of Certificate of Citizenship—Disloyal Utterances as Evidence of False Oath of Allegiance. United States v. Wursterbarth (U. S. District Court, May 13, 1918, 249 Fed. 908); United States v. Darmer (U. S. District Court, May 10, 1918, 249 Fed. 989). In each of these cases an action was brought by the United States district attorney to cancel the certificate of citizenship of an American citizen of German birth on the ground that it had been fraudulently procured. Wursterbarth was naturalized in 1882 and at that time took the oath required by statute renouncing and abjuring all allegiance and fidelity to any foreign sovereign and especially the emperor of Germany. After the entrance of the United States into the war he was asked on three occasions to give money to the Red Cross or to the Young Men's Christian Association war fund. Each time he replied that he would do nothing to injure the country in which he was born, brought up and educated, that he hoped that Germany would win the war, and that he only came to this country on a vacation or visit. The truth of these statements was defiantly admitted. The court canceled the certificate of citizenship. These facts, it declared, indicated that Wursterbarth at the present time bears an allegiance to Germany superior to that which he bears to the United States. It is fair to presume that 35 years of residence and citizenship in this country would strengthen his allegiance to the United States and weaken his allegiance to Germany. It follows, therefore, the oath of allegiance to this country which he took at the time of his naturalization was false. The presumption in his favor arising from so long a period of good citizenship including the holding of public office is of no consequence since during that time no occasion has arisen until now to test the reserve allegiance which he had held to Germany. Furthermore any doubt regarding a person's right to enjoy the privileges of citizenship should be resolved in favor of the government. The Darmer case differs from this only in the fact that the expressions of disloyalty upon which the action was based were even more striking than in the case against Wursterbarth.

Shipping—Effect of War in Canceling Agreement between Owner and Charterer. Essex S. S. Co. v. Langbehn (U. S. Circuit Court of Appeals,

April 3, 1918, 25 Fed. 98). An agreement between a shipowner and charterer entered into in July, 1914, allowed the charterer to select as the destination of the cargo one of three ports, among which was Hamburg. As a British vessel the ship in question was forbidden on the outbreak of war between England and Germany from trading with an enemy port. The owner accordingly refused to take the vessel to Hamburg although that port had been selected by the charterer in accordance with the terms of the agreement. It was held, following the doctrine laid down in the case of *The Kronprinzessin Cecilie* (244 U. S. 12, 37 Sup. Ct. 490, 61 L. Ed. 960), that the outbreak of war justified the nonperformance of such a contract. This release from obligation, however, was mutual. Since the owner could not be compelled by the charterer to take his vessel to a German port in violation of the law of his country, so likewise the owner could not compel the charterer to select either of the other two ports named in the agreement as the destination of the vessel when he had originally and in good faith selected Hamburg.